

#25
SL

Docket No.: 42P5379

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re the Application of:)
Jerrold V. Hauck and David W. LaFollette)
Application No.: 09/059,533) Appeal No.: 2005-0782
Filing Date: April 13, 1998) Paper No.: 23
For: EARLY ACKNOWLEDGMENT OF)
PRIMARY PACKETS)



REQUEST FOR REHEARING

Board Of Patent Appeals and Interferences
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

Applicants request rehearing of a single issue from the Decision on Appeal mailed August 5, 2005 in connection with the above-referenced case. Specifically, Applicants request rehearing of the Board's decision sustaining the Examiner's rejection of Claim 4 under 35 U.S.C. §103(a).

Consistent with the Board's interpretation throughout the remainder of the opinion, the Board has interpreted the primary packet of the Boal as including the both the header and the data frames even though separated by a wait interval. Thus, returning a NAK during the wait interval may allow Boal to satisfy the "identifying, during the receiving, that the node cannot successfully accept the primary packet" as set forth in Claim 4 because the timing of the sending need not have an explicit relation to when the identifying occurred. However, since sending of the NAK to the originator of the primary packet must occur concurrently with the receiving pursuant to the next element of Claim 4, Applicant respectfully submits that the system such as

a Boal in which the NAK may only occur during the wait period or after the data frame definitionally is not concurrently sending the NAK with the receiving of the primary packet. The primary packet is received as the header frame and the data frame neither of which is being received at the time of the NAK during the wait or after the data frame.

Thus, Applicants respectfully submits that the Board has misapprehended the content of the last element of Claim 4, merely requiring that the NAK be sent sometime between when the first portion of the primary packet is sent and when the final portion of the primary packet is sent. While this would be true in the context of a primary packet which was sent continuously, where as in Boal the Board interpreted the primary packet as constituting multiple discrete elements sent separated by wait periods the receiving is not occurring during the wait period and the NAK is not being sent concurrently with the receiving. Thus, Applicants respectfully submit that the rejection of Claim 4 should also be overturned for analogous reasoning to that the Board applied to other of the independent claims.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Date August 22, 2005

By: Thomas Coester
Thomas M. Coester
Reg. No. 39,637

TMC/smb

12400 Wilshire Blvd., 7th Floor
Los Angeles, CA 90025
(310) 207-3800

CERTIFICATE OF MAILING
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage in an envelope addressed to: Board of Patent Appeals and Interferences, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450 on August 22, 2005.

Susan M. Barrette 8/22/05
Susan M. Barrette Date

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

		Application No.	09/059,533
		Filing Date	April 13, 1998
		First Named Inventor	Jerrold V. Hauck
		Art Unit	<i>RECEIVED</i> AUG 25 2005
		Examiner Name	BOARD OF PATENT APPEALS AND INTERFERENCES
Total Number of Pages in This Submission	6	Attorney Docket Number	42390P5479

ENCLOSURES (check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Response <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> PTO/SB/08 <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Basic Filing Fee <input type="checkbox"/> Declaration/POA <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s)	<input type="checkbox"/> After Allowance Communication to Group <input checked="" type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):
<div style="border: 1px solid black; padding: 5px; height: 60px;"> -Return Receipt Postcard (1) -Request for Rehearing (2) </div>		
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Thomas M. Coester, Reg. No. 39,637 BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
Signature	<i>Thomas Coester</i>
Date	August 22, 2005

CERTIFICATE OF MAILING/TRANSMISSION

I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Board of Patent Appeals and Interferences, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450.

Typed or printed name	Susan M. Barrette		
Signature	<i>Susan Barrette</i>	Date	August 22, 2005

Based on PTO/SB/21 (04-04) as modified by Blakely, Sokoloff, Taylor & Zafman (wlr) 06/04/2004.
SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450

FEE TRANSMITTAL for FY 2005

Patent fees are subject to annual revision.

Applicant claims small entity status. See 37 CFR 1.27.

TOTAL AMOUNT OF PAYMENT (\$ 0.00)

<i>Complete if Known</i>	
Application Number	09/059,533
Filing Date	April 13, 1998
First Named Inventor	Jerrold V. Hauck
Examiner Name	
Art Unit	
Attorney Docket No.	42390P5379

METHOD OF PAYMENT (*check all that apply*)

Check Credit card Money Order None Other (please identify): _____

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

Charge fee(s) indicated below Charge fee(s) indicated below, except for the filing fee
 Charge any additional fee(s) or underpayment of fee(s) Credit any overpayments under 37 CFR §§ 1.16, 1.17, 1.18 and 1.20.

FEE CALCULATION

1. EXTRA CLAIM FEES

		Extra Claims	Fee from below	Fee Paid
Total Claims	11	20 ^m	0	= \$0.00
Independent Claims	4	4 ^m	0	= \$0.00
Multiple Dependent				=

Large Entity	Small Entity			
Fee Code	Fee (\$)	Fee Code	Fee (\$)	<u>Fee Description</u>
1202	50	2202	25	Claims in excess of 20
1201	200	2201	100	Independent claims in excess of 3
1203	360	2203	180	Multiple Dependent claim, if not paid
1204	300	2204	150	**Reissue independent claims over original patent
1205	300	2205	150	**Reissue claims in excess of 20 and over original patent
SUBTOTAL (1)			(\$)	0.00

**or number previously paid, if greater. For Reissues, see below*

2 ADDITIONAL FEES

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description
1051	130	2051	65	Surcharge - late filing fee or oath
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet
2053	130	2053	130	Non-English specification
1251	120	2251	60	Extension for reply within first month
1252	450	2252	225	Extension for reply within second month
1253	1,020	2253	510	Extension for reply within third month
1254	1,590	2254	795	Extension for reply within fourth month
1255	2,160	2255	1,080	Extension for reply within fifth month
1401	500	2401	250	Notice of Appeal
1402	500	2402	250	Filing a brief in support of an appeal
1403	1,000	2403	500	Request for oral hearing
1451	1,510	2451	1,510	Petition to institute a public use proceeding
1460	130	2460	130	Petitions to the Commissioner
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)
1806	180	1806	180	Submission of Information Disclosure Stmt
1809	790	1809	395	Filing a submission after final rejection (37 CFR § 1.11)
1810	790	2810	395	For each additional invention to be examined (37 CFR § 1.11)

Fee Paid

Other fee (specify)

SUBTOTAL (2)

(S)

SUBMITTED BY

Complete (if applicable)

Submitted by		Complete (if applicable)		
Name (Print/Type)	Thomas M. Coester	Registration No. (Attorney/Agent)	39,637	Telephone
Signature			Date	08/22/05

Based on PTO/SB/17 (12-04) as modified by Blakely, Sokoloff, Taylor & Zafman (wlr) 12/15/2004.
SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450